

Senate Study Bill 1035

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY
GENERAL BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the compensation of a guardian ad litem in
2 certain criminal cases involving a child witness.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1344DP 83
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1 1 Section 1. Section 910.1, subsection 4, Code 2009, is
1 2 amended to read as follows:
1 3 4. "Restitution" means payment of pecuniary damages to a
1 4 victim in an amount and in the manner provided by the
1 5 offender's plan of restitution. "Restitution" also includes
1 6 fines, penalties, and surcharges, the contribution of funds to
1 7 a local anticrime organization which provided assistance to
1 8 law enforcement in an offender's case, the payment of crime
1 9 victim compensation program reimbursements, payment of
1 10 guardian ad litem compensation pursuant to section 915.37,
1 11 payment of restitution to public agencies pursuant to section
1 12 321J.2, subsection 9, paragraph "b", court costs including
1 13 correctional fees approved pursuant to section 356.7,
1 14 court-appointed attorney fees ordered pursuant to section
1 15 815.9, including the expense of a public defender, and the
1 16 performance of a public service by an offender in an amount
1 17 set by the court when the offender cannot reasonably pay all
1 18 or part of the court costs including correctional fees
1 19 approved pursuant to section 356.7, or court-appointed
1 20 attorney fees ordered pursuant to section 815.9, including the
1 21 expense of a public defender.

1 22 Sec. 2. Section 910.2, Code 2009, is amended to read as
1 23 follows:

1 24 910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY
1 25 SENTENCING COURT.

1 26 1. In all criminal cases in which there is a plea of
1 27 guilty, verdict of guilty, or special verdict upon which a
1 28 judgment of conviction is rendered, the sentencing court shall
1 29 order that restitution be made by each offender to the victims
1 30 of the offender's criminal activities, to the clerk of court
1 31 for fines, penalties, surcharges, and, to the extent that the
1 32 offender is reasonably able to pay, for crime victim
1 33 assistance reimbursement, payment of guardian ad litem

1 34 compensation pursuant to section 915.37, restitution to public
1 35 agencies pursuant to section 321J.2, subsection 9, paragraph

2 1 "b", court costs including correctional fees approved pursuant
2 2 to section 356.7, court-appointed attorney fees ordered

2 3 pursuant to section 815.9, including the expense of a public
2 4 defender, when applicable, or contribution to a local

2 5 anticrime organization. However, victims shall be paid in
2 6 full before fines, penalties, and surcharges, crime victim

2 7 compensation program reimbursement, payment of guardian ad
2 8 litem compensation pursuant to section 915.37, public

2 9 agencies, court costs including correctional fees approved
2 10 pursuant to section 356.7, court-appointed attorney fees

2 11 ordered pursuant to section 815.9, including the expenses of a
2 12 public defender, or contributions to a local anticrime

2 13 organization are paid. In structuring a plan of restitution,
2 14 the court shall provide for payments in the following order of

2 15 priority: victim, fines, penalties, and surcharges, crime
2 16 victim compensation program reimbursement, guardian ad litem

2 17 compensation, public agencies, court costs including
2 18 correctional fees approved pursuant to section 356.7,

2 19 court-appointed attorney fees ordered pursuant to section

2 20 815.9, including the expense of a public defender, and
2 21 contribution to a local anticrime organization.
2 22 2. When the offender is not reasonably able to pay all or
2 23 a part of the crime victim compensation program reimbursement,
2 24 guardian ad litem compensation, public agency restitution,
2 25 court costs including correctional fees approved pursuant to
2 26 section 356.7, court-appointed attorney fees ordered pursuant
2 27 to section 815.9, including the expense of a public defender,
2 28 or contribution to a local anticrime organization, the court
2 29 may require the offender in lieu of that portion of the crime
2 30 victim compensation program reimbursement, guardian ad litem
2 31 compensation, public agency restitution, court costs including
2 32 correctional fees approved pursuant to section 356.7,
2 33 court-appointed attorney fees ordered pursuant to section
2 34 815.9, including the expense of a public defender, or
2 35 contribution to a local anticrime organization for which the
3 1 offender is not reasonably able to pay, to perform a needed
3 2 public service for a governmental agency or for a private
3 3 nonprofit agency which provides a service to the youth,
3 4 elderly, or poor of the community. When community service is
3 5 ordered, the court shall set a specific number of hours of
3 6 service to be performed by the offender which, for payment of
3 7 guardian ad litem compensation pursuant to section 915.37, and
3 8 for payment of court-appointed attorney fees ordered pursuant
3 9 to section 815.9, including the expenses of a public defender,
3 10 shall be approximately equivalent in value to those costs.
3 11 The judicial district department of correctional services
3 12 shall provide for the assignment of the offender to a public
3 13 agency or private nonprofit agency to perform the required
3 14 service.

3 15 Sec. 3. Section 910.9, unnumbered paragraph 3, Code 2009,
3 16 is amended to read as follows:

3 17 Fines, penalties, and surcharges, crime victim compensation
3 18 program reimbursement, payment of guardian ad litem
3 19 compensation pursuant to section 915.37, public agency
3 20 restitution, court costs including correctional fees claimed
3 21 by a sheriff or municipality pursuant to section 356.7, and
3 22 court-appointed attorney fees ordered pursuant to section
3 23 815.9, including the expenses for public defenders, shall not
3 24 be withheld by the clerk of court until all victims have been
3 25 paid in full. Payments to victims shall be made by the clerk
3 26 of court at least quarterly. Payments by a clerk of court
3 27 shall be made no later than the last business day of the
3 28 quarter, but may be made more often at the discretion of the
3 29 clerk of court. The clerk of court receiving final payment
3 30 from an offender shall notify all victims that full
3 31 restitution has been made. Each office or individual charged
3 32 with supervising an offender who is required to perform
3 33 community service as full or partial restitution shall keep
3 34 records to assure compliance with the portions of the plan of
3 35 restitution and restitution plan of payment relating to
4 1 community service and, when the offender has complied fully
4 2 with the community service requirement, notify the sentencing
4 3 court.

4 4 Sec. 4. Section 915.37, Code 2009, is amended to read as
4 5 follows:

4 6 915.37 GUARDIAN AD LITEM FOR PROSECUTING CHILD WITNESSES.
4 7 1. A prosecuting witness who is a child, as defined in
4 8 section 702.5, in a case involving a violation of chapter 709
4 9 or section 710.10, 726.2, 726.3, 726.6, or 728.12, is entitled
4 10 to have the witness's interests represented by a guardian ad
4 11 litem at all stages of the proceedings arising from such
4 12 violation. The guardian ad litem shall be a practicing
4 13 attorney and shall be designated by the court after due
4 14 consideration is given to the desires and needs of the child
4 15 and the compatibility of the child and the child's interests
4 16 with the prospective guardian ad litem. If a guardian ad
4 17 litem has previously been appointed for the child in a
4 18 proceeding under chapter 232 or a proceeding in which the
4 19 juvenile court has waived jurisdiction under section 232.45,
4 20 the court shall appoint the same guardian ad litem under this
4 21 section. The guardian ad litem shall receive notice of and
4 22 may attend all depositions, hearings, and trial proceedings to
4 23 support the child and advocate for the protection of the child
4 24 but shall not be allowed to separately introduce evidence or
4 25 to directly examine or cross-examine witnesses. However, the
4 26 guardian ad litem shall file reports to the court as required
4 27 by the court. If a prosecuting witness is fourteen, fifteen,
4 28 sixteen, or seventeen years of age, and would be entitled to
4 29 the appointment of a guardian ad litem if the prosecuting
4 30 witness were a child, the court may appoint a guardian ad

4 31 litem if the requirements for guardians ad litem in this
4 32 section are met, and the guardian ad litem agrees to
4 33 participate without compensation.
4 34 2. The clerk of the district court of the county where the
4 35 case occurred shall pay from funds appropriated to the
5 1 judicial branch reasonable compensation to a guardian ad litem
5 2 appointed by the court pursuant to this section, if such
5 3 compensation is permissible pursuant to subsection 1.
5 4 3. References in this section to a guardian ad litem shall
5 5 be interpreted to include references to a court appointed
5 6 special advocate as defined in section 232.2, subsection 9.
5 7 EXPLANATION
5 8 This bill relates to the compensation of a guardian ad
5 9 litem in certain criminal cases involving a child witness.
5 10 The amendment to Code section 910.1 makes the compensation
5 11 of a guardian ad litem appointed for a child witness pursuant
5 12 to Code section 915.37 recoverable as restitution in a
5 13 criminal case, if such compensation is permissible pursuant to
5 14 Code section 915.37.
5 15 The amendment to Code section 910.2 specifies that payment
5 16 of guardian ad litem compensation pursuant to Code section
5 17 915.37 is restitution and that victim restitution shall be
5 18 paid in full prior to payment of guardian ad litem
5 19 compensation restitution. The amendment to Code section 910.2
5 20 also establishes the order of priority for payment of guardian
5 21 ad litem compensation in a restitution plan.
5 22 The amendment to Code section 910.9 specifies that the
5 23 payment of guardian ad litem compensation restitution shall
5 24 not be paid until the victim restitution has been paid in
5 25 full.
5 26 The amendment to Code section 915.37 establishes that a
5 27 child victim of enticing away a minor under Code section
5 28 710.10 is entitled to have a guardian ad litem appointed to
5 29 represent the interest of the child in all proceedings arising
5 30 out of the criminal offense.
5 31 The amendment to Code section 915.37 requires that the
5 32 clerk of the district court of the county where the offense
5 33 occurred pay reasonable compensation to the guardian ad litem
5 34 appointed on behalf of a child victim.
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